

Amendments to House Bill No. 457  
1st Reading Copy

Requested by Representative Deborah Kottel

For the House Judiciary Committee

Prepared by David Niss  
February 18, 2009 (7:28am)

1. Title, line 5 through line 9.  
**Strike:** "ADOPTING" on line 5 through "ATTORNEY;" on line 9  
**Insert:** "PROVIDING FOR CIVIL AND CRIMINAL LIABILITY FOR THEFT  
BASED ON A POWER OF ATTORNEY; PROVIDING FOR IMPORTANT  
INFORMATION TO THE PRINCIPAL'S AGENT ON THE STATUTORY FORM  
POWER OF ATTORNEY; AND"
2. Title, line 9 through line 12.  
**Strike:** "SECTIONS" on line 9 through "72-31-237," on line 12  
**Insert:** "SECTION 72-31-201,"
3. Page 1, line 16 through page 38, line 23.  
**Strike:** sections 1 through 48 in their entirety  
**Renumber:** subsequent sections
4. Page 38, line 25.  
**Following:** "attorney"  
**Insert:** "-- exceptions"
5. Page 39.  
**Following:** line 8  
**Insert:** "(3) This section does not apply to a federally  
regulated or state-regulated commercial bank, savings bank,  
trust company, building and loan association, or credit  
union."
6. Page 39, line 10.  
**Following:** "attorney"  
**Insert:** "-- exceptions"
7. Page 39.  
**Following:** line 21  
**Insert:** "(4) This section does not apply to a federally  
regulated or state-regulated commercial bank, savings bank,  
trust company, building and loan association, or credit  
union."
8. Page 39, lines 23 and 24.  
**Strike:** section 51 in its entirety

**Insert: "Insert: "Section 3.** Section 72-31-201, MCA, is amended to read:

**"72-31-201. Statutory form of power of attorney.** (1) The following statutory form of power of attorney is legally sufficient:

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THIS PART. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I ..... (insert your name and address)  
appoint ..... (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects: TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS. TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING. TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

..... (A) real property transactions;  
..... (B) tangible personal property transactions;  
..... (C) stock and bond transactions;  
..... (D) commodity and option transactions;  
..... (E) banking and other financial institution transactions;  
..... (F) business operating transactions;  
..... (G) insurance and annuity transactions;  
..... (H) estate, trust, and other beneficiary transactions;  
..... (I) claims and litigation;  
..... (J) personal and family maintenance;  
..... (K) benefits from social security, medicare, medicaid, or other governmental programs or from military service;  
..... (L) retirement plan transactions;  
..... (M) tax matters;  
..... (N) ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES, YOU MAY GIVE SPECIAL  
INSTRUCTIONS LIMITING OR EXTENDING

THE POWERS GRANTED TO YOUR AGENT.

.....  
.....  
.....  
.....

.....  
.....  
UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney revokes all previous powers of attorney signed by me.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU. IF YOU DO WANT THIS POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU, YOU SHOULD READ THOSE POWERS OF ATTORNEY AND SATISFY THEIR PROVISIONS CONCERNING REVOCATION. THIRD PARTIES WHO RECEIVED COPIES OF THOSE POWERS OF ATTORNEY SHOULD BE NOTIFIED.

This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT.

If it becomes necessary to appoint a conservator of my estate or guardian of my person, I nominate my agent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT TO NOMINATE YOUR AGENT AS CONSERVATOR OR GUARDIAN.

If any agent named by me dies, becomes incompetent, resigns or refuses to accept the office of agent, I name the following (each to act alone and successively, in the order named) as successor(s) to the agent:

1. ....
2. ....
3. ....

For purposes of this subsection, a person is considered to be incompetent if and while: (1) the person is a minor; (2) the person is an adjudicated incompetent or disabled person; (3) a conservator has been appointed to act for the person; (4) a guardian has been appointed to act for the person; or (5) the person is unable to give prompt and intelligent consideration to business matters as certified by a licensed physician.

I agree that any third party who receives a copy of this document may act under it. I may revoke this power of attorney by a written document that expressly indicates my intent to revoke. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this ..... day of ....., 20...

.....

(Your Signature)

State of .....

(County) of .....

This document was acknowledged before me on

.....  
(Date) by  
.....  
(Name of Principal)  
.....  
(Signature of Notarial Officer)  
..... (Seal, if any) (Title  
(and Rank))

[My commission expires:.....]

BY SIGNING, ACCEPTING, OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT. THE AGENT WORKS EXCLUSIVELY FOR THE BENEFIT OF THE PRINCIPAL. THE FOREMOST DUTY AS THE AGENT IS THAT OF LOYALTY TO AND PROTECTION OF THE BEST INTERESTS OF THE PRINCIPAL. THE AGENT SHALL DIRECT ANY BENEFITS DERIVED FROM THE POWER OF ATTORNEY TO THE PRINCIPAL. THE AGENT HAS A DUTY TO AVOID CONFLICTS OF INTEREST AND TO USE ORDINARY SKILL AND PRUDENCE IN THE EXERCISE OF THESE DUTIES.

.....  
(Signature of Agent)  
Signed this ..... day of ....., 20...

#### IMPORTANT INFORMATION FOR AGENT

##### Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

(1) do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;

(2) act in good faith;

(3) do nothing beyond the authority granted in this power of attorney; and

(4) disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner: (Principal's Name) by (Your Signature) as Agent.

Unless the Special Instructions in this power of attorney state otherwise, you must also:

(1) act loyally for the principal's benefit;

(2) avoid conflicts that would impair your ability to act in the principal's best interest;

(3) act with care, competence, and diligence;

(4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(5) cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the

principal's expectations, to act in the principal's best interest; and

(6) attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

#### Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

- (1) death of the principal;
- (2) the principal's revocation of the power of attorney or your authority;
- (3) the occurrence of a termination event stated in the power of attorney;
- (4) the purpose of the power of attorney is fully accomplished; or
- (5) if you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

#### Liability of Agent

The meaning of the authority granted to you is defined in the Statutory Form Power of Attorney Act, Title 72, chapter 31, part 2. If you violate the Statutory Form Power of Attorney Act or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

(2) A statutory power of attorney is legally sufficient under this part if the wording of the form substantially complies with subsection (1), the form is properly completed, and the signature of the principal is acknowledged. The agent's signature is not necessary if the agent accepts or acts under the appointment.

(3) If the line in front of (N) of the form under subsection (1) is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N)."

{ Internal References to 72-31-201:

72-31-223x }"

"

9. Page 39, line 26 through line 28.

**Strike:** subsection (1) in its entirety

**Renumber:** subsequent subsections

10. Page 39, line 29.

**Strike:** "49"

**Insert:** "1"

11. Page 39, line 30.

**Strike:** "49"

**Insert:** "1"

12. Page 40, line 1.

**Strike:** "50"

**Insert:** "2"

13. Page 40, line 2.

**Strike:** "50"

**Insert:** "2"

- END -